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There's No Place Like Home - Except When You Are under Arrest: The Third Circuit's Analysis of Home Arrests in United States v. Veal

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THERE'S NO PLACE LIKE HOME—EXCEPT WHEN YOU ARE UNDER ARREST: THE THIRD CIRCUIT'S ANALYSIS OF HOME ARRESTS IN *UNITED STATES v. VEAL*

"[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[1]

I. INTRODUCTION

For defendants awaiting trial or appealing a conviction, a court's interpretation of three words—"reason to believe"—can significantly alter their lives.[2] These three words, articulated by the Supreme Court in *Payton v. New York*,[3] without any elaboration of their meaning, became the source of conflicting interpretations by the circuit courts.[4] As a result, varied trial outcomes exist among the circuits and equally varied police procedures occur in departments across the nation.[5] The Court provided these words to answer a seemingly simple question: How certain must a police officer be that a suspect is home prior to entering the residence to effectuate an arrest?[6]

Payton allows police officers armed with an arrest warrant to enter a suspect's residence when they have "reason to believe" that the suspect is

1. Payton v. New York, 445 U.S. 573, 585 (1980) (citing United States v. United States District Court, 407 U.S. 297, 313 (1972)).

2. *See id.* at 603 (holding that consistent with Fourth Amendment, police officers armed with arrest warrant may enter suspect's dwelling when there is "reason to believe" suspect is inside).

3. 445 U.S. 573 (1980).

4. *See, e.g.*, United States v. Gorman, 314 F.3d 1105, 1112 (9th Cir. 2002) ("[T]he 'reason to believe' standard is far from clear. The Supreme Court did not define the 'reason to believe' standard in *Payton* nor has it defined the standard subsequently."); United States v. Magluta, 44 F.3d 1530, 1534 (11th Cir. 1995) ("The 'reason to believe' standard was not defined in *Payton*, and since *Payton*, neither the Supreme Court, nor the courts of appeals have provided much illumination."); *see also* Matthew A. Edwards, *Posner's Pragmatism and* Payton *Home Arrests*, 77 WASH. L. REV. 299, 339-40 (2002) ("[R]ecent Supreme Court case law demonstrates unequivocal support for *Payton*, although unfortunately without providing much guidance as to the content of the *Payton* standard.").

5. *See* Stephen A. Saltzburg, *The Fourth Amendment: Internal Revenue Code or Body of Principles?*, 74 GEO. WASH. L. REV. 956, 1016 (2006) (discussing burden on police officers who are implementing Fourth Amendment law). Police officers have particular difficulty discerning whether entry into a residence to arrest an individual or to search the premises is constitutionally permitted. *See id.* at 1016 (same).

6. *See* Edwards, *supra* note 4, at 299 (discussing "vexing" question addressed in *Payton*).

present in the residence.[7] Across the circuits, courts construe the *Payton* "reason to believe" standard to mean that the police must have either probable cause[8] or something less than probable cause, such as a reasonable belief.[9] Consequently, most criminal defendants arrested in their

7. *See Payton*, 445 U.S. at 603 ("[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.").

8. *See* BLACK'S LAW DICTIONARY 1239 (8th ed. 2004) ("[Probable cause is a] reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime."). *But see* Ornelas v. United States, 517 U.S. 690, 695-97 (1996) ("Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'") (citations omitted). Legal scholars have also had difficulty fixing a standard to probable cause and many doubt whether it is even possible to do so. *See, e.g.*, AKHIL REED AMAR, THE CONSTITUTION AND CRIMINAL PROCEDURE: FIRST PRINCIPLES 19 (1997) ("[P]robable cause cannot be a fixed standard. It would make little sense to insist on the same amount of probability regardless of the imminence of the harm, the intrusiveness of the search . . . ."); Christopher Slobogin, *Let's Not Bury* Terry*: A Call for the Rejuvenation of the Proportionality Principle*, 72 ST. JOHN'S L. REV. 1053, 1082 (1998) ("[Probable cause] is the standard with which we are most familiar—except we don't really know what it means."). Furthermore, the FBI has acknowledged the difficulty of defining probable cause, which is especially troublesome because police officers are expected to apply that standard "with some exactness" each day. *See* Edward Hendrie, J.D., *Inferring Probable Cause*, FBI LAW ENFORCEMENT BULLETIN, 71(2) (February 2002): 23-32, *available at* http://www.fbi.gov/publications/leb/2002/feb02leb.htm (last visited Oct. 3, 2007) (discussing complexities of probable cause). Hendrie states:

> Probable cause is a somewhat nebulous standard . . . . Many have tried to apply "a one size fits all" standard of probable cause to every situation, because they believe that probable cause is one consistent standard of proof that occupies a fixed point. In fact, probable cause offers a range of proofs that occupies a zone.

Id.

9. *Compare* United States v. Pruitt, 458 F.3d 477, 485 (6th Cir. 2006) ("[R]easonable belief is a lesser standard than probable cause, and that reasonable belief that a suspect is within the residence . . . is required to enter a residence to enforce an arrest warrant."), *with Gorman*, 314 F.3d at 1111 ("We now hold that the 'reason to believe,' or reasonable belief, standard of *Payton* . . . embodies the same standard of reasonableness inherent in probable cause."), *and* United States v. Agnew, 407 F.3d 193, 196 (3d Cir. 2005) ("*Payton* establishes that police may enter a suspect's residence to make an arrest armed only with an arrest warrant if they have probable cause to believe that the suspect is in the home."). Commentators have likened "reason to believe" to "reasonable suspicion," set forth in *Terry v. Ohio*. *See* Edwards, *supra* note 4, at 363-64 (analogizing reasonable belief to reasonable suspicion) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)). Further, the Supreme Court has compared the requirements of reasonable suspicion with those of probable cause. *See* Alabama v. White, 496 U.S. 325, 330 (1990) (elaborating on difference between reasonable suspicion and probable cause). The Court provided:

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion

homes move to exclude incriminating evidence seized during their arrest—evidence that typically will play a major part in their eventual convictions.[10]

In *United States v. Veal*,[11] the Third Circuit held that police could satisfy the *Payton* "reason to believe" standard with probable cause.[12] The court, however, left the door open and hinted to practitioners that a lesser standard might suffice.[13] The *Veal* court's failure to provide a bright-line rule significantly affects how police officers approach home arrests and how defense lawyers seek to adequately represent clients.[14]

This Casebrief discusses the Third Circuit's preferred analysis of the standard that police officers possessing an arrest warrant must use to determine whether a suspect is presently home. In addition, this Casebrief serves as a guide to practitioners bringing or defending against such challenges in the Third Circuit.[15] Part II summarizes the *Payton* standard, specifically its application in the Third Circuit and in other circuits.[16] Part III outlines the facts and procedural history of *Veal*.[17] Part III also delineates the Third Circuit's approach in deciding the requisite certainty required under *Payton*.[18] Part IV provides practical suggestions and predictions for Third Circuit practitioners regarding the application and the future of the *Payton* standard in the Third Circuit.[19] Part V concludes that the Third

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can arise from information that is less reliable than that required to show probable cause.

Id.

10. *See* 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.1(a), at 262 (4th ed. 2004) (asserting that whether particular entry by police for purposes of making arrest was lawful "becomes a matter of critical importance if evidence is obtained as a consequence of the entry").

11. 453 F.3d 164 (3d Cir. 2006).

12. *See id.* at 167 n.3 (discussing different interpretations of *Payton* standard and applying probable cause test based on Third Circuit precedent). Because the probable cause standard was met, the court declined to decide whether "a possibly lower standard of reasonable belief should be applied here." *Id.* (acknowledging possibility of lesser standard under *Payton*).

13. *See id.* at 167 (leaving open possibility that another standard could exist in Third Circuit).

14. *See id.* (same).

15. For a discussion of the Third Circuit's preferred analysis, see *infra* notes 101-23 and accompanying text. For a discussion of suggestions to practitioners, see *infra* notes 124-34 and accompanying text.

16. For a discussion of *Payton* and its application in the circuit courts, including the Third Circuit, see *infra* notes 37-83 and accompanying text.

17. For a discussion of the relevant facts and procedural history of *Veal*, see *infra* notes 84-100 and accompanying text.

18. For a discussion of the Third Circuit's analysis in *Veal*, see *infra* notes 101-23 and accompanying text.

19. For a discussion of suggestions and predictions for Third Circuit practitioners, see *infra* notes 124-34 and accompanying text.

Circuit should adopt a lesser standard consistent with language used by the Supreme Court and its sister circuits.[20]

II. BACKGROUND

A. *Home Arrests:* Payton v. New York *and the Fourth Amendment*

The Fourth Amendment of the United States Constitution applies to all searches and seizures conducted by government agents.[21] Specifically, the Amendment's first clause provides Americans with protection from unreasonable searches and seizures; its second clause requires that search and arrest warrants be both specific and supported by probable cause.[22] Yet, the relationship between these two clauses has caused courts to struggle with interpreting and applying the Fourth Amendment.[23] When deciding Fourth Amendment search and seizure cases, courts must balance an individual's privacy rights against the government's need to investigate crimes.[24] The significant effect that Fourth Amendment jurisprudence has on both the lives of citizens and the future of law enforcement further

20. For a discussion of why the Third Circuit should adopt a lesser standard under *Payton*, see *infra* notes 135-41 and accompanying text.

21. *See* U.S. CONST. amend. IV (outlining constitutional protections). Specifically, the Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

22. *See id.* (providing language of Fourth Amendment).

23. *See* John C. Miner, *Reason to Believe: The Key to Warrantless Entry*—United States v. Gorman, 25 WHITTIER L. REV. 181, 195 (2003) (acknowledging "high level of confusion" in Fourth Amendment law); Sarah E. Rosenberg, Comment, Buie *Signals: Has an Arrest Warrant Become a License to Fish in Private Waters?*, 41 EMORY L.J. 321, 321 (1992) (contending that Supreme Court grapples with language of Fourth Amendment). Further, differing interpretations of the relationship between the two clauses of the Fourth Amendment complicate the inquiry. *See* Bryan Murray, Note, *After* United States v. Vaneaton, *Does* Payton v. New York *Prevent Police from Making Warrantless Routine Arrests Inside the Home?*, 26 GOLDEN GATE U. L. REV. 135, 137 (1996) (discussing different interpretations of relationship between two clauses). Specifically, one interpretation provides that the second clause defines the first clause, resulting in a reasonable search and seizure requiring a warrant unless exceptional circumstances exist. *See id.* at 138 (explaining interpretation of relationship between clauses of Fourth Amendment). Another interpretation, as derived from the Supreme Court, reads the clauses independently and balances an individual's expectation of privacy against the government's interest in investigating a crime. *See id.* (same).

24. *See* Delaware v. Prouse, 440 U.S. 648, 654 (1979) ("[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's fourth amendment interests against its promotion of legitimate governmental interests."); *see also* Thomas K. Clancy, *The Future of Fourth Amendment Seizure Analysis after* Hodari D. *and* Bostick, 28 AM. CRIM. L. REV. 799, 799-800 (1991) (discussing balancing test applied by Supreme Court in Fourth Amendment cases).

complicates the struggle.[25] For example, if a court finds a Fourth Amendment violation by the police, the likely result is that the evidence would be inadmissible and hence unavailable, thereby possibly allowing a guilty defendant to go free.[26]

Most Fourth Amendment cases involve searches and seizures occurring in an individual's home, which is a place afforded extensive constitutional protection.[27] The seventeenth century English adage "a man's home is his castle" embodies the sine qua non of the Fourth Amendment, which remains unchanged today.[28] Judges and legal scholars use this castle adage to highlight the historical and political significance of the Fourth Amendment.[29] As such, the Fourth Amendment draws the line at the en-

25. *See* Saltzburg, *supra* note 5, at 1016 (finding numerous Supreme Court decisions confusing for police).

26. *See id.* at 956-57 (commenting on effects of Fourth Amendment decisions).

27. *See* Payton v. New York, 445 U.S. 573, 589 (1980) ("In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms."); *id.* at 587 ("'Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment.'" (quoting Dorman v. United States, 435 F.2d 385, 389 (D.C. Cir. 1970))); Silverman v. United States, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); *see also* Tracey Maclin, Katz, Kyllo, *and Technology: Virtual Fourth Amendment Protection in the Twenty-First Century*, 72 MISS. L.J. 51, 113 (2002) (noting that Supreme Court affords individual's home "the most scrupulous protection").

28. *See Payton*, 445 U.S. at 597 (quoting *Semayne's Case*, 5 Co. Rep. 91a (K.B. 1603)); *see also* Minnesota v. Carter, 525 U.S. 83, 100 (1998) (explaining that this adage "has acquired over time a power and an independent significance justifying a more general assurance of personal security in one's home, an assurance which has become part of our constitutional tradition"); United States v. Riley, 906 F.2d 841, 847 (2d Cir. 1990) (mentioning strong American belief in home as "inviolate castle and keep"); Miner, *supra* note 23, at 181 (contending that adage is sine qua non of Fourth Amendment and observing that this once simple concept has now become complex in practice).

29. *See* Wilson v. Layne, 526 U.S. 603, 610 (1999) (noting that Fourth Amendment embodies "centuries-old principle" of respecting privacy of home); *see also* David I. Caplan & Sue Wimmershoff-Caplan, *Postmodernism and the Model Penal Code v. The Fourth, Fifth, and Fourteenth Amendments—And the Castle Privacy Doctrine in the Twenty-First Century*, 73 UMKC L. REV. 1073, 1083-84 (2005) (discussing scholarly interest in castle adage); Jonathan L. Hafetz, *"A Man's Home is His Castle?": Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 175, 175-76 (2002) (noting that adage "forms part of the fabric" of Fourth Amendment and scholars explain adage to symbolize home's important place in search and seizure law); Linda C. McClain, *Inviolability and Privacy: The Castle, the Sanctuary, and the Body*, 7 YALE J.L. & HUMAN. 195, 202 (1995) (commenting on why jurists use castle maxim and noting that it provides privacy defense in tort law and constitutional law, "with a common theme of restricting access and keeping others out"); Nathan H. Seltzer, *When History Matters Not: The Fourth Amendment in the Age of Secret Search*, 40 CRIM. L. BULL. 1, 5 (2004) ("[Framers] valued sanctity and security of home" and when Framers adopted Fourth Amendment, they extended "the English tradition that a man's house is his castle."); *see also* Deleith Duke Gossett, Note, *Constitutional Law and*

trance of a home for purposes of executing search warrants or arrests.[30] Accordingly, absent exigent circumstances, government agents may not cross the threshold of a person's home without a warrant.[31]

As the law of search and seizure, particularly the law surrounding home entry, became increasingly complicated and riddled with exceptions, the Supreme Court took the opportunity in *Payton* to distinguish between entering a home to search and entering a home to arrest.[32] The

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Criminal Procedure—Media Ride-Alongs into the Home: Can They Survive a Head-On Collision between First and Fourth Amendment Rights?, 22 U. ARK. LITTLE ROCK L. REV. 679, 700 (2000) (commenting that castle adage symbolizes respect for home, which is "embedded in historical traditions and embodied in our constitutional framework").

30. *See Payton*, 445 U.S. at 590 ("Fourth Amendment has drawn a firm line at the entrance to the house."); *see also* Kyllo v. United States, 533 U.S. 27, 40 (2001) (reiterating precedent that Fourth Amendment draws line at entrance to home and elaborating that line "must not only be firm but also bright"); Michael R. Stahlman, *New Developments in Search and Seizure: More than Just a Matter of Semantics*, 2002 ARMY LAW. 31, 35 (2002) (classifying Supreme Court principle of drawing line at entrance of home as "bedrock protection under Fourth Amendment").

31. *See Payton*, 445 U.S. at 590 (pronouncing rule on home entry consistent with Fourth Amendment).

32. *See* Saltzburg, *supra* note 5, at 957 (finding that over past forty-five years, Supreme Court has complicated meaning of Fourth Amendment and because of numerous rules and sub-rules created, Fourth Amendment law "has begun to take on the shape of an Internal Revenue Code (a hodgepodge of rules enacted by ever-shifting coalitions of decision makers) rather than a body of coherent principles (of the type often associated with judicial decisions and reasoning)"); *see also Payton*, 445 U.S. at 589 (describing that any difference between two intrusions "are merely ones of degree rather than kind" and they both share fundamental characteristic of "the breach of the entrance to an individual's home").

In *Payton*, the Court reviewed the constitutionality of a New York statute that allowed police officers to enter a suspect's residence to effectuate an arrest without a warrant, consent or exigent circumstances. *See id.* at 574 (describing New York statute at issue). The Court consolidated two similar cases, *Payton v. New York* and *Riddick v. New York* where the defendants were both convicted of crimes and evidence seized from their homes was used against them in court. *See id.* at 573 (describing cases on appeal). In Payton's case, the police had probable cause to believe that Payton had committed a murder, and six officers went to Payton's address to arrest him without a warrant. *See id.* at 576 (reciting facts of case). The police knocked on Payton's door and, despite the lights being on and music playing inside, Payton did not respond. *See id.* (same). The police then used crowbars to break open the door and seized a shell casing which was later admitted into evidence at Payton's trial. *See id.* at 576-77 (same). Payton eventually surrendered to the police, was indicted for murder and moved to suppress the shell casing taken from his home. *See id.* at 577 (describing procedural history).

In *Riddick*, victims identified the defendant as the person who committed two armed robberies in 1971. *See id.* at 578 (detailing facts of *Riddick*). The police learned of Riddick's address but they did not obtain a warrant for his arrest. *See id.* (same). A detective and three police officers knocked on Riddick's door and his young son opened the door. *See id.* (same). The police officers could see Riddick sitting in bed covering himself with a sheet. *See id.* (same). The police entered the house, arrested Riddick and then searched for weapons by opening a chest of drawers near the bed, where they found narcotics and other paraphernalia. *See id.* (describing arrest and subsequent search). Riddick was later indicted on narcotics charges and moved to have the evidence suppressed. *See id.* (reciting procedural

issue confronting courts at the time was whether entering the home to search and entering to arrest required the same constitutional protection—a warrant.[33] The *Payton* Court ultimately held that only in exigent circumstances, a police officer may enter a suspect's home to arrest a suspect without an arrest warrant.[34] The Court then concluded its opinion with its most oft-cited language: "[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."[35] *Payton* not only continues to govern the law on home arrests today, but its meaning continues to be the subject of considerable analysis in the federal circuit courts.[36]

B. *Other Circuits' Interpretation and Application of* Payton

1. Payton *Requires Less than Probable Cause*

The circuit courts that held *Payton* requires less than probable cause tended to rely on the plain language of the *Payton* decision, specifically focusing on the Supreme Court's word choice.[37] For example, in *United*

history). The trial judge ruled that the police's warrantless entry into Riddick's home was valid under the New York statute and that the subsequent search was reasonable. *See id.* at 577-78 (same). In both cases, the Appellate Division and the New York Court of Appeals upheld the convictions and refused to suppress the evidence. *See id.* at 580 (noting New York Court of Appeals affirmed both convictions in one opinion).

33. *Compare* Dorman v. United States, 435 F.2d 385, 389 (D.C. Cir. 1970) (holding that entering home to arrest and to search and seize both involve same interest in protecting privacy of home, therefore requiring same constitutional protection), *with* People v. Payton, 380 N.E.2d 224, 228-29 (N.Y. 1978) (finding significant difference between intruding for searching premises and entry for making arrest, including difference in governmental interest in accomplishing purpose of intrusion in each instance), *rev'd* 445 U.S. 573 (1980).

34. *See Payton*, 445 U.S. at 590 (holding that "absent exigent circumstances" police seeking to arrest suspect may not enter suspect's home without arrest warrant). The Court reversed the judgments against the *Payton* defendants because the police officers had failed to obtain arrest warrants. *See id.* (applying holding to instant case).

35. *See id.* (setting forth law on constitutionality of home arrests). The *Payton* majority supported its holding about the authority within an arrest warrant by reasoning that "[i]f there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law." *Id.* at 602-03 (highlighting importance of judicial officer's approval and subsequent issuance of arrest warrant).

36. *See* LAFAVE, *supra* note 10, at 265 (noting that meaning of *Payton* continues to be uncertain); Edwards, *supra* note 4, at 334 (acknowledging that although *Payton* seems to set forth straightforward rules for police, implementation of *Payton* over past two decades has raised challenging issues).

37. *See, e.g.*, United States v. Pruitt, 458 F.3d 477, 484 (6th Cir. 2006) (finding that Supreme Court's use of different terms indicates its intent to apply different standards); United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (finding that because Supreme Court did not use words "probable cause," it intended something other than what is required of probable cause).

States v. Pruitt,[38] the Sixth Circuit interpreted *Payton*'s "reason to believe" standard to mean that police officers must consider common sense factors and the totality of the circumstances when determining whether a suspect is inside of a residence.[39] In its analysis, the Sixth Circuit focused closely on the language the Supreme Court used in *Payton*.[40] Specifically, the court reasoned that because the *Payton* Court used the words "probable cause" to describe obtaining an arrest warrant and the words "reason to believe" to describe entering a dwelling, the Court must have intended each phrase to have a different meaning.[41] As such, the *Pruitt* court deduced from this language that the reasonable belief standard requires a lower burden of proof than probable cause.[42]

Moreover, to supplement its interpretation of *Payton*, the Sixth Circuit analyzed another case in which the Supreme Court used both "probable cause" and "reason to believe" in consecutive sentences.[43] This provided

38. 458 F.3d 477 (6th Cir. 2006).

39. *See id.* at 483 (describing requirements to formulate reasonable belief that suspect is on premises). Examples of "common sense" factors deemed sufficient by the court to meet the lesser-standard of reasonable belief include hearing the television inside of the home and the presence of the suspect's car in the driveway when arriving at the suspect's home early in the morning. *See id.* (citing United States v. Route, 104 F.3d 59, 62-63 (5th Cir. 1997) ("[F]inding that sound of television on the inside of the house and the presence of a car in the driveway was sufficient to form basis of the reasonable belief that the suspect was inside of the home.").

40. *See id.* at 484 (scrutinizing language used in *Payton* to determine that Court did not intend for probable cause to be standard used to describe police officer's authority to enter suspect's dwelling).

41. *See id.* ("Had the Court intended probable cause to be the standard for entering a residence, it would have either expressly stated so or used the same term for both situations. Instead, its use of different terms indicates that it intended different standards to apply."). The Sixth Circuit relied on the D.C. Circuit's analysis of the Supreme Court's choice of "reason to believe." *See id.* (citing United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005)). In *Thomas*, the D.C. Circuit reasoned that it is more than "likely . . . that the Supreme Court in *Payton* used a phrase other than 'probable cause' because it meant something other than 'probable cause.'" *Thomas*, 429 F.3d at 286.

42. *See Pruitt*, 458 F.3d at 484 (finding reasonable belief standard to be less stringent than probable cause).

43. *See id.* (analyzing language used in Supreme Court precedent). Specifically, the Sixth Circuit analyzed the following language to exemplify its interpretation of *Payton*:

> [B]y requiring a protective sweep to be justified by *probable cause* to believe that a serious and demonstrable potentiality for danger existed, the Court of Appeals of Maryland applied an unnecessarily strict Fourth Amendment standard. The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a *reasonable belief* based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Maryland v. Buie, 494 U.S. 325, 336-37 (1990) (emphasis added). *But see* United States v. Magluta, 44 F.3d 1530, 1534 (11th Cir. 1995) (rejecting *Buie*'s reasoning). The *Magluta* court concluded:

support for the Sixth Circuit to establish not only that the phrases have different meanings, but also that the Court does not use the terms interchangeably.[44] The Sixth Circuit's approach illustrates the interpretation adopted by a majority of the circuit courts applying the *Payton* reason to believe standard.[45] Further, commentators who agree with this approach argue that a police officer's duties should not be further complicated by imposing an additional probable cause requirement.[46]

> [T]he Court's language in *Buie* is not dispositive, because the Court there merely reasoned that based on the facts of *Buie* the police officers' possession of probable cause entitled them to enter and sweep the residence—the Court did not and has not, ever held that probable cause is *required* to enter a residence to execute an arrest warrant for the resident.

Id.

44. *See Pruitt*, 458 F.3d at 484 (concluding that because Supreme Court did not use terms interchangeably, it "considers reasonable belief to be a less stringent standard than probable cause"); *see also* LAFAVE, *supra* note 10, at 264 (commenting that Supreme Court phrased *Payton* standard "so as not to encourage lower courts to adopt a hard-nosed 'probable cause to believe suspect is home' test").

45. *See, e.g.*, *Thomas*, 429 F.3d at 286 (finding that *Payton* Court did not intend probable cause to be standard). The *Thomas* court provided:

> We think it more likely, however, that the Supreme Court in *Payton* used a phrase other than 'probable cause' because it meant something other than 'probable cause.' Accordingly, we expressly hold that an officer executing an arrest warrant may enter a dwelling if he has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there and is present at the time.

Id.; *see also* Valdez v. McPheters, 172 F.3d 1220, 1225-26 (10th Cir. 1999) (interpreting *Payton* as requiring lesser knowledge standard than probable cause); United States v. Route, 104 F.3d 59, 63 (5th Cir. 1997) (finding that distinct from probable cause, "reason to believe standard" allows police officer with arrest warrant to ascertain whether suspect is "probably within certain premises without an additional trip to the magistrate" to obtain search warrant to enter); United States v. Risse, 83 F.3d 212, 216 (8th Cir. 1996) (applying lesser standard under *Payton* and elaborating that police officers' assessment of whether suspect is present in residence "need not in fact be correct;" instead they must "reasonably believe" that suspect both resides and is present inside dwelling); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (rejecting probable cause as knowledge requirement under *Payton* and instead adopting less stringent standard); *Magluta*, 44 F.3d at 1534 ("[The] strongest support for a lesser burden than probable cause remains the text of *Payton*, and what we must assume was a conscious effort on the part of the Supreme Court in choosing the verbal formulation of 'reason to believe' over that of 'probable cause.'"); Edwards, *supra* note 4, at 363 ("Most courts have held that *Payton* reason to believe requires less proof than probable cause.").

46. *See* LAFAVE, *supra* note 10, at 266 (discussing effect of additional burden of probable cause on police); Miner, *supra* note 23, at 201 (advocating standard with which police can easily work); Saltzburg *supra* note 5, at 1016 (suggesting solutions to ease burden on police). *But see* Edwards, *supra* note 4, at 373 (theorizing that close review of decisions applying *Payton* standard reveals that reason to believe has no more discernable meaning than probable cause). Edwards elaborates that even though the "reason to believe" standard appears as if it requires less proof than probable cause, the courts implementing probable cause are just as lenient as the courts applying a lesser standard. *See id.* (finding legal reasoning fails in discerning difference in application of standards).

2. Payton *Standard is Equivalent to Probable Cause*

In *United States v. Gorman*,[47] the Ninth Circuit became the first and only circuit to equate the reasonable belief standard with probable cause.[48] In so holding, the court relied on instances where the terms "probable cause" and "reason to believe" were used synonymously in the *Payton* setting.[49] In addition, the Ninth Circuit analyzed probable cause as "a concept of reasonableness" to deduce that both reasonable belief and probable cause derive from the same standard of reasonableness, and thus are the same.[50] Further, the Ninth Circuit reasoned that neither *Payton* nor its own precedent prevented it from equating probable cause with

47. 314 F.3d 1105 (9th Cir. 2002).

48. *See id.* at 1111 (footnote omitted) ("'[T]he reason to believe,' or reasonable belief, standard of *Payton* . . . embodies the same standard of reasonableness inherent in probable cause."); *see also Pruitt*, 458 F.3d at 483 (announcing Ninth Circuit alone held reasonable belief standard is same as probable cause for purposes of determining whether suspect is inside residence). Although the Third Circuit employed probable cause as the standard in *Veal*, it did not outwardly equate the two standards and left open the possibility of a lesser standard. *See* United States v. Veal, 453 F.3d 164, 167 n.3 (3d Cir. 2006) (addressing dual interpretations of *Payton* and refusing to decide whether lower standard should apply in instant case because probable cause was already met); *cf.* Edwards, *supra* note 4, at 362 (finding that "efforts to illuminate the *Payton* standard by comparing it to probable cause are fruitless and highlight the weakness of traditional legal reasoning in this context").

49. *See Gorman*, 314 F.3d at 1114 (citing court's own precedent to exemplify that probable cause and reason to believe entail same protections). Specifically, the court cited to *United States v. Harper*, a case in which it used the term "probable cause" to describe the legality of the police's entry in a suspect's dwelling. *See id.* (distinguishing "probable cause" standard).

> [F]or example, we explicitly used the probable cause standard to find that the entry and search of David and Adrian Harper's residence pursuant to an arrest warrant for David was legal: Once the police possess[ed] an arrest warrant and probable cause to believe [David] was in his home, the officers were entitled to search anywhere in the house in which [he] might be found.

Id. (quoting Harper, 928 F.2d 894, 897 (9th Cir. 1991)) (citations omitted). The Ninth Circuit also relied on the Eighth Circuit's interpretation of *Payton*: "'*Payton* authorizes entry on the basis of the existing arrest warrant for the defendant and probable cause to believe that the defendant was within the premises.'" *See id.* at 1114 (quoting United States v. Clifford, 664 F.2d 1090, 1093 (8th Cir. 1981)) (emphasis added).

50. *See id.* at 1113 (describing Fifth Circuit decision that addresses standard of reasonableness embedded in probable cause). The *Gorman* court then quoted the Fifth Circuit, which provided: "*Reasonable belief embodies the same standards of reasonableness* but allows the officer, who has already been to the magistrate to secure an arrest warrant, to determine that the suspect is probably within certain premises without an additional trip to the magistrate and without exigent circumstances." *Id.* (quoting United States v. Cravero, 545 F.2d 406, 421 (5th Cir.1977)); *cf.* Miner, *supra* note 23, at 195 (critiquing *Gorman* and stating that *Cravero* court "offered no more than an equivocation on the subject of what 'reason to believe' means. The court simply stated that probable cause is essentially the same as 'reason to believe'").

"reason to believe."[51] Thus, relying on its own rule and its own definition of "reason to believe," a unanimous court in *Gorman* held that police may enter any residence pursuant to an arrest warrant when they have probable cause to believe the suspect is within the premises.[52] By equating "reason to believe" with probable cause, *Gorman* represents one approach to interpreting the *Payton* standard.[53]

C. *Prior Third Circuit Precedent*

In recent decisions, the Third Circuit has tended to employ the probable cause standard when applying *Payton*.[54] It is difficult, however, to determine under what circumstances the court would permit a lesser standard to exist.[55] The court's holdings in *United States v. Agnew*[56] and *United States v. Edmonds*[57] embody the relevant Third Circuit precedent.[58]

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51. *See Gorman*, 314 F.3d at 1114 (discussing possibility that both standards are equivalent).

> Nothing in *Underwood* or *Payton* precludes us from using the same standard of reasonableness embedded in probable cause as the standard of reasonableness for the "reason to believe" standard. Rather, *Underwood, Payton,* and our subsequent cases suggest that the standard of probable cause, and not of reasonable suspicion, is the standard already being applied in this Circuit.

Id. *But see* Miner, *supra* note 23, at 197 (finding Gorman court's reasoning suspect). Miner further asserts that the Gorman court merely reasserts "reason to believe" or takes cases out of context while citing "only that portion of a rule that agrees with its holding, even when the cited rule is in opposition to the court's own holding." *Id.*

52. *See Gorman*, 314 F.3d at 1114-15 (concluding reason to believe should be interpreted to "entail the same protection and reasonableness inherent in probable cause"). *But see* Miner, *supra* note 23, at 189 (criticizing *Gorman* and finding that facts and legal analysis of applicable case law "reveal an altogether different reality" than *Gorman* court portrayed).

53. *See Gorman*, 314 F.3d at 1114-15 (equating "reason to believe" with "probable cause"); *see also* Miner, *supra* note 23, at 183 (noting Ninth Circuit as first circuit court to equate reasonable belief standard with probable cause).

54. *See* United States v. Agnew, 407 F.3d 193, 196 (3d Cir. 2005) (discussing *Payton* as requiring police to have probable cause that suspect is in home, yet quoting another circuit that describes standard as requiring merely reasonable belief).

55. *See id.* (same); United States v. Edmonds, 52 F.3d 1236, 1247 (3d Cir. 1995) (addressing *Payton* as requiring "probable cause" but also framing inquiry as involving "reasonable grounds to believe").

56. 407 F.3d 193 (3d Cir. 2005).

57. 52 F.3d 1236 (3d Cir. 1995).

58. *See generally Agnew*, 407 F.3d at 193 (holding probable cause existed when defendant was in home because police saw him through window); *Edmonds*, 52 F.3d at 1247 (addressing constitutionality of home arrest).

1. United States v. Agnew

In *United States v. Agnew*, the Third Circuit phrased the *Payton* standard as requiring probable cause.[59] As a result, the *Agnew* court found probable cause to believe the defendant was in a home because the police saw him through a window.[60] The court convicted the defendant of distributing crack cocaine and being a felon in possession of a firearm.[61] The police officers obtained the evidence used to secure the conviction when they entered the defendant's home pursuant to an arrest warrant.[62]

In holding the arrest constitutional, the court relied on *Payton*.[63] Without any explanation, however, the court phrased the inquiry as one that required "probable cause" for the police to believe that the defendant was inside of the residence.[64] The court proceeded to quote the *Payton* standard, including the phrase "reason to believe"; however, in summarizing the law and applying it to the facts, the court reverted to the words "probable cause."[65] Thus, the Third Circuit in *Agnew* apparently adopted the probable cause standard without ever addressing why and whether any differences existed between the standard it employed in *Agnew* and the standard set forth by *Payton*.[66]

Moreover, the *Agnew* court also addressed the issue of police entry into a third party's residence armed with an arrest warrant for a suspect located inside.[67] The court conceded that *Payton* only dealt with police

59. *See Agnew*, 407 F.3d at 196 (applying *Payton* standard as whether police in possession of arrest warrant had "probable cause to believe that the suspect is in the home").

60. *See id.* (detailing police officers' basis for having probable cause to believe defendant was inside residence).

61. *See id.* at 194 (reciting defendant's convictions).

62. *See id.* at 196 (describing events that occurred during defendant's arrest). Specifically, the police saw a clear plastic bag filled with cocaine in plain view during the arrest. *See id.* at 195 (same). Dauphin County assigned the case to the Fugitive Task Force, which serves felony warrants, drug warrants and works on other cases, because the defendant had previously evaded capture twice by jumping out of a window and by holding onto the roof of a passing car. *See id.* at 194 (detailing warrants for defendant's arrest). The Fugitive Task Force eventually discovered the defendant's location from an informant, and also learned that the defendant possessed a firearm and narcotics. *See id.* at 194-95 (setting forth how police obtained information regarding defendant's whereabouts).

63. *See id.* at 196 (using *Payton* as precedent for decision).

64. *See id.* at 196 (establishing that *Payton* requires police, armed with arrest warrant, to have *probable cause* to believe suspect is inside home before entering home where suspect is allegedly presiding).

65. *See id.* ("[A] valid misdemeanor arrest warrant 'carries with it the authority to enter the residence of the person named in the warrant in order to execute the warrant so long as the police have a *reasonable belief* that the suspect resides at the place to be entered and that he is currently present in the dwelling.'" (emphasis added) (quoting United States v. Clayton, 210 F.3d 841, 843 (8th Cir. 2000))).

66. *See id.* at 196 (phrasing *Payton* as requiring probable cause and affirming defendant's conviction because probable cause existed in case).

67. *See id.* at 195-96 (addressing defendant's claim on appeal that police entry was unconstitutional).

entry into the home of the subject named in the warrant.[68] The court held, however, that whether the home was the defendant's residence is irrelevant because an entry pursuant to an arrest warrant does not violate a defendant's Fourth Amendment rights.[69]

In reaching this conclusion, the court first determined that if the defendant lived at the address where he was arrested, his arrest would be lawful under *Payton*, which involved the same situation.[70] Moreover, the court determined that if the defendant did not live at that address, then he may not have had a privacy interest in the residence and therefore would lack standing to challenge the police officers' entry.[71] The court distinguished *Steagald v. United States*,[72] which held that the Fourth Amendment prohibits police officers from entering a third party's home to serve an arrest warrant on a suspect.[73] Specifically, the court reasoned that *Steagald* protected the third-party owner's privacy interests and not the suspect's own privacy interests.[74] Therefore, under *Agnew*, whether an ar-

68. *See id.* at 196 (limiting *Payton*'s applicability to entry by police into dwelling of subject of arrest warrant).

69. *See id.* at 195-96 (addressing constitutionality of police entry pursuant to arrest warrant).

70. *See id.* (discussing *Payton*). For a discussion of the facts of *Payton*, see *supra* note 32 and accompanying text.

71. *See id.* (explaining overnight guest is only individual with reasonable expectation of privacy in third party residence) (citing Minnesota v. Olson, 495 U.S. 91, 95-97 (1990)); *see also* Saltzburg, *supra* note 5, at 1016 (asserting that according to Supreme Court precedent, if police officers do not have search warrant when they enter third party's home, third party owner has right to object, but temporary guest does not).

72. 451 U.S. 204 (1981).

73. *See Agnew*, 407 F.3d at 196-97 (discussing *Steagald*).

74. *See id.* (distinguishing *Steagald* to uphold police entry in instant case). The court relied on the Ninth Circuit to support its reasoning:

> A person has no greater right of privacy in another's home than in his own. If an arrest warrant and reason to believe the person named in the warrant is present are sufficient to protect that person's fourth amendment privacy rights in his own home, they necessarily suffice to protect his privacy rights in the home of another.
>
> The right of a third party not named in the arrest warrant to the privacy of his home may not be invaded without a search warrant. But this right is personal to the home owner and cannot be asserted vicariously by the person named in the arrest warrant.

Id. at 197 (quoting United States v. Underwood, 717 F.2d 482, 484 (9th Cir. 1983)).

The Eleventh Circuit also employed this reasoning despite its interpretation of "reason to believe" as something less than probable cause. *See* Valdez v. McPheters, 172 F.3d 1220, 1225 (10th Cir. 1999) (finding different meanings in "reason to believe" and "probable cause"). The court stated:

> In the real world, people do not live in individual, separate, hermetically-sealed residences. They live with other people, they move from one residence to another. Requiring that the suspect actually reside at the residence entered would mean that officers could never rely on *Payton*, since they could never be certain that the suspect had not moved out the previous day . . . .

rest took place pursuant to an arrest warrant in the suspect's own home or in the home of a third party, the Third Circuit will not hold that the police entry violated the defendant's Fourth Amendment rights.[75]

2. United States v. Edmonds

The Third Circuit, ten years prior to *Agnew*, briefly addressed the constitutionality of a home arrest in *United States v. Edmonds*.[76] In *Edmonds*, when FBI agents entered Carlton Love's residence armed with a warrant for his arrest, Love was not there; however, the agents found drug paraphernalia in plain view.[77] The police eventually seized the paraphernalia pursuant to a search warrant based on information contained in the arrest warrant and the agents' visual observation of the paraphernalia in Love's apartment.[78] Although Love conceded that *Payton* allowed the agents to enter his apartment pursuant to the arrest warrant, he argued that the agents lacked reasonable grounds to believe that he was home, thus rendering the subsequent search warrant invalid.[79]

In holding that the agents had reason to believe that Love was in his apartment, the court failed to employ any legal reasoning and relied solely on its analysis of the relevant facts instead.[80] Rather than mentioning "probable cause" in its analysis, the Third Circuit framed the agent's inquiry as "a reason to believe," in sharp contrast to the words used in *Agnew* years later.[81] Thus, because the court failed to elaborate on what was re-

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> *Payton* and *Steagald* cannot be understood to divide the world into residences belonging solely to the suspect on the one hand, and third parties on the other. The rule announced in *Payton* is applicable so long as the suspect "possesses common authority over, or some other significant relationship to," the residence entered by police.

Id. (citing United States v. Risse, 83 F.3d 212, 217 (8th Cir. 1996)).

75. *See Agnew*, 407 F.3d at 197 ("Thus, even if [the defendant] was a nonresident with a privacy interest, the Fourth Amendment would not protect him from arrest by police armed with an arrest warrant.").

76. *See generally* United States v. Edmonds, 52 F.3d 1236 (3d Cir. 1995).

77. *See id.* at 1247-48 (reciting facts of case).

78. *See id.* (same).

79. *See id.* at 1247 (setting forth Love's claim on appeal).

80. *See id.* at 1248 (setting forth all relevant facts that led agents to believe Love was inside his apartment on day of his arrest). The court relied on the following relevant facts in its holding: Love signed the apartment's lease; the gas account for the apartment was under his name; a management representative of the apartment complex confirmed Love lived in the apartment and described Love's black Ford Mustang parked in front; the management representative later confirmed to agents that he witnessed Love leave the apartment in the evening; the agents arrived at the apartment at 6:45 a.m., a time at which they believed someone would still be home; and the agents recognized Love's Mustang parked in front of the apartment. *See id.* (offering support for holding that agents possessed reasonable belief that Love was inside his apartment).

81. *See id.* at 1247 ("The district court concluded that the agents had *reason to believe* Carlton Love was in his apartment on the morning of August 12th, and we agree.") (emphasis added). *But see id.* at 1248 (explaining that agents called Assistant United States Attorney to determine whether they had *probable cause* to enter

quired to attain a "reason to believe," Edmonds's only precedential value for the *Agnew* court was how to undertake a factual inquiry.[82] Both *Agnew* and *Edmonds* embody the relevant Third Circuit precedent and served as the underlying foundation of the court's decision in *Veal*.[83]

III. THE THIRD CIRCUIT'S DECISION IN *UNITED STATES v. VEAL*

A. *Facts and Procedural History*

The police arrested Samuel Veal in his wife's home on January 8, 2003, pursuant to two open arrest warrants—one for attempted murder and the other for violating parole.[84] Veal's parole officer issued the parole violation when he discovered that Veal no longer lived with his mother, a required condition of his parole.[85] The parole warrant specifically identified Veal's wife, Tina Veal, as a possible lead for information about his whereabouts.[86]

During the course of their investigation, the detectives visited several addresses in order to find Veal.[87] At one such address, the police were informed that Veal and his wife previously rented the property, but that they subsequently moved.[88] Ultimately, the detectives discovered that the Veals were living at 1848 South Conestoga Street in Philadelphia.[89] The detectives visited that address between 3:00 a.m. and 4:00 a.m. on January 8, 2003 and noticed a vehicle parked near the house that matched the description of Veal's vehicle.[90] After confirming that the vehicle was registered to Tina Veal, the detectives prepared a report for the Homicide Fu-

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Love's residence). It is difficult to ascertain whether the Third Circuit agreed that probable cause was necessary or whether the court was transcribing what the agents asked the Assistant United States Attorney. *See id.* (describing Assistant United States Attorney's phone call).

82. *See id.* at 1247-48 (analyzing relevant facts to determine how agents reasonably believed Love was home).

83. *See* United States v. Veal, 453 F.3d 164, 167 (3d Cir. 2006) (relying on *Agnew* and *Edmonds*).

84. *See id.* at 165-66 (reciting facts of case). The Philadelphia detectives discovered the open arrest warrants while investigating a homicide in which the victim's nephew claimed he sold drugs for Veal. *See id.* (same).

85. *See id.* at 165-66 (same). On January 6, 2003, the Philadelphia detectives confirmed with the Pennsylvania Board of Probation and Parole (PBPP) that the parole warrant remained valid and that Veal no longer resided with his mother. *See id.* at 166 (describing steps police took to confirm parole warrant and Veal's violation).

86. *See id.* (recounting details of parole warrant).

87. *See id.* (describing detectives' investigation into Veal's whereabouts).

88. *See id.* (reciting facts of case).

89. *See id.* (explaining how detectives discovered Tina Veal's address by researching Philadelphia Housing Authority records).

90. *See id.* (stating facts of case). The detectives acquired a description of Veal's vehicle from the murder victim's nephew to whom Veal also supplied drugs. *See id.* (explaining how detectives identified vehicle as Veal's).

gitive Squad and requested the squad to make an early morning arrest of Veal.[91]

At 6:00 a.m., a member of the fugitive squad, accompanied by two other detectives and additional uniformed police officers, went to the house at 1848 South Conestoga Street.[92] After confirming that the vehicle driven by Veal and registered to Tina Veal remained in the driveway, the detectives banged on the front door of the house.[93] After opening the door and allowing the officers inside, Tina Veal claimed that her husband was not home; however, the officers heard noises upstairs and discovered Veal hiding under a bed holding two handguns.[94] The officers then arrested Veal and seized evidence from the bedroom, including Veal's two guns.[95]

After Veal was indicted for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), he moved to suppress all evidence seized by the officers following his arrest, including the two guns.[96] The United States District Court for the Eastern District of Pennsylvania denied Veal's motion to suppress and sentenced Veal to 120 months in prison.[97] Veal appealed the denial of his suppression motion to the Third Circuit Court of Appeals on two grounds.[98] First, "he had a reasonable

91. *See id.* (describing procedure leading to Veal's arrest). Specifically, the report stated that "Veal was wanted on a parole violation and an arrest warrant, and that he was living at 1848 South Conestoga Street," which was Tina Veal's listed address. *See id.* (outlining report for Fugitive Squad).

92. *See id.* (describing events preceding Veal's arrest).

93. *See id.* (detailing police officer's procedure). The officers identified themselves and stated they were serving an arrest warrant on Veal. *See id.* (same).

94. *See id.* (reciting sequence of events at Veal residence). Once the officers arrived upstairs, Veal requested their help in removing himself from his hideout location underneath the bed. *See id.* (same). An officer lifted the bed and found Veal holding a pistol in each hand, with each pointed at an officer. *See id.* (same). In response, the officer slammed the bed back down on top of Veal, which began approximately forty minutes of negotiations, ultimately leading to Veal's surrender and arrest. *See id.* (same).

95. *See id.* (noting evidence seized would later be used against Veal in court and would form basis for criminal charge).

96. *See id.* (noting grounds for Veal's indictment and motion to suppress). 18 U.S.C. § 922(g)(1) provides:

> It shall be unlawful for any person—who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Id.

97. *See Veal*, 453 F.3d at 166-67 (setting forth results of suppression hearing). After the suppression hearing, Veal entered a conditional guilty plea, reserving his right to challenge the denial of his suppression motion. *See id.* at 167 (describing procedural history).

98. *See id.* (detailing procedural history and outlining Veal's arguments on appeal).

expectation of privacy while [present inside] his wife's residence."[99] Second, the police lacked "probable cause to believe that he was both residing at and present in the residence."[100]

B. *The Third Circuit's Analysis*

The Third Circuit upheld the district court's decision to deny Veal's motion to suppress the evidence seized from the bedroom where his arrest occurred.[101] Despite framing its inquiry under *Payton* of whether the police had probable cause to believe that Veal was inside his home as requiring a "reasonable belief," the court applied this standard using the term "probable cause."[102] Further, the court rejected Veal's argument that he had a privacy interest while inside his wife's home.[103]

1. *Third Circuit Uses "Probable Cause" Standard*

In its analysis, the court first set forth that *Payton* provides the appropriate constitutional standard applicable to the instant case.[104] The court acknowledged that *Payton* does not specifically indicate whether courts should apply a probable cause or reasonable belief standard to determine whether a suspect is inside of a residence.[105] Further, the Third Circuit expressed uncertainty about whether there is a difference between the two standards.[106] In response to this uncertainty, the court looked to its own precedent, specifically *Agnew*, which described the standard using "probable cause" language.[107] Moreover, as it did in *Agnew*, the Third Circuit quoted the *Payton* standard as recited by the Tenth Circuit using the term "reasonable belief" despite framing its own inquiry with the term "probable cause."[108]

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99. *See id.* at 167 (listing Veal's first argument on appeal).

100. *See id.* at 167 (listing Veal's second argument on appeal). Although Veal did not specifically challenge the meaning of the *Payton* standard, his second argument on appeal required the Third Circuit to set forth its interpretation of the *Payton* standard. *See id.* n.3 (noting *Payton* as constitutional standard for home arrests and proceeding to articulate its position on requisite certainty required of police before entering suspect's residence with arrest warrant).

101. *See id.* at 169 (affirming district court's decision).

102. *See id.* at 167 (framing *Payton* standard).

103. *See id.* (rejecting Veal's privacy argument).

104. *See id.* (setting forth constitutional framework applicable to instant case).

105. *See id.* 167 n.3 (discussing *Payton* standard).

106. *See id.* (questioning appropriate standard under *Payton*). The court went on to state that most courts have held that the *Payton* standard "requires less proof than probable cause." *See id.* at 167 (quoting Matthew A. Edwards, *Posner's Pragmatism and* Payton *Home Arrests*, 77 WASH. L. REV. 299, 363 (2002)).

107. *See Veal*, 453 F.3d at 167 n.3 (explaining precedent to determine appropriate standard).

108. *See id.* at 167 (framing *Payton* as requiring reasonable belief). Specifically, the court acknowledged that "*Payton* requires that officers have 'a reasonable belief the arrestee (1) lived in the residence, and (2) is within the residence at the time of entry.'" *Id.* (quoting United States v. Gay, 240 F.3d 1222, 1226 (10th Cir.

The court held that under the facts of the instant case, the police officers had probable cause to believe that Veal was inside of the residence.[109] In undertaking a "common sense" approach, the court relied on four factors to find probable cause that Veal lived at Tina Veal's residence.[110] First, the parole violation warrant listed that Veal did not live with his mother and identified Tina Veal as a lead.[111] Second, the Veals' former landlord stated that Tina and Samuel Veal had recently lived together.[112] Third, the car described as Veal's was registered to Tina Veal and was parked in front of her home.[113] Fourth, Veal was married to Tina Veal.[114]

The court then listed four facts that gave the police probable cause to believe that Veal was located inside of the residence: first, the car Veal drove was parked in front of the house; second, the officers arrived early in the morning at a time when it was reasonable to expect that Veal would still be home; third, the officers heard noises while in Tina Veal's living room; and fourth, the officers knew of Veal's status as a fugitive who may try to conceal his location.[115] Because the Third Circuit found that proba-

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2001)). In the very next sentence, however, the court elaborated on the inquiry and provided: "To determine whether the police had *probable cause* to believe that a suspect was residing and present in a home, we apply a common sense approach and consider the facts and circumstances within the knowledge of the law enforcement agents, when viewed in the totality." *Id.* (defining inquiry) (emphasis added) (internal quotation marks omitted).

109. *See id.* at 168 (finding that facts supported police possessing probable cause to believe Veal was inside residence). The Third Circuit relied upon other circuit decisions that establish the common sense factors listed. *See, e.g.*, United States v. Lovelock, 170 F.3d 339, 344 (2d Cir. 1999) (using warrant as evidence for location of defendant's address); United States v. Magluta, 44 F.3d 1530, 1537 (11th Cir. 1995) (considering tip by third party concerning where defendant lived and noting evidence that defendant visited residence often).

110. *See Veal*, 453 F.3d at 168 (listing "common sense" factors to support conclusion that police officers had probable cause to believe that Veal resided with his wife, Tina Veal).

111. *See id.* (describing first factor).

112. *See id.* (detailing second factor).

113. *See id.* (explaining third factor).

114. *See id.* (outlining fourth factor).

115. *See id.* (reciting relevant facts to support probable cause). The Third Circuit used precedent from other circuits to support its characterization of the relevant facts to establish probable cause. *See, e.g.*, United States v. Gay, 240 F.3d 1222, 1227 (10th Cir. 2001) (acknowledging that any noise heard inside residence suggested to officers that somebody was inside); *id.* (finding that police officers can rely on suspect's status as criminal to conclude that suspect may conceal whereabouts); United States v. Boyd, 180 F.3d 967, 978 (8th Cir. 1999) (noting car described as defendants parked outside of girlfriend's home); United States v. Magluta, 44 F.3d 1530, 1538 (11th Cir. 1995) ("The presence of a vehicle connected to a suspect is sufficient to create the inference that the suspect is at home."); *Magluta*, 44 F.3d at 1535 (establishing that police can assume person is home at certain time of day).

ble cause existed, it declined to further discuss whether a lower standard could apply.[116]

2. *Third Circuit Rejects Veal's Privacy Interest Argument*

The court next rejected Veal's argument that he had a privacy interest while inside of his wife's residence.[117] The court held that even if he did possess such an interest, the police still had probable cause to believe he was residing at and present in the specific residence.[118] The court acknowledged that Tina Veal's home was not Samuel Veal's residence.[119] Even so, the court followed *Agnew* and held that the police did not need a separate search warrant to enter Tina Veal's home to arrest her husband.[120] The court then set forth the requirements of *Payton*, and using the reasonable belief language, held that the police officers needed a reasonable belief that the arrestee was living in the residence and was inside the residence at the time.[121] While elaborating upon this standard, the court reverted to using the term "probable cause."[122] The Third Circuit ultimately concluded that the police officers had probable cause to believe that Samuel Veal lived in Tina Veal's residence, and that he was inside the residence at the time of police entry.[123]

IV. PREDICTIONS AND SUGGESTIONS FOR THIRD CIRCUIT PRACTITIONERS

Given the number of arrests that occur each year, it is important that police officers, lawyers and judges share a similar understanding of the law governing home arrests.[124] Challenging the constitutionality of an arrest

116. *See Veal*, 453 F.3d at 167 n.3 ("As we conclude that the probable cause standard was met, we need not determine whether a possibly lower standard of reasonable belief should be applied here.").

117. *See id.* at 167 (rejecting Veal's argument).

118. *See id.* (rejecting Veal's legal claim).

119. *See id.* at 167 n.4 (noting that Tina Veal's residence was not her husband's residence because record revealed that Veal was required to live with his mother).

120. *See id.* n.5 (distinguishing Veal's situation from Supreme Court's holding in *Steagald v. United States*, which provided that search warrant was required to enter third party's residence to arrest suspect). The Third Circuit relied on the logic applied in *Agnew* that *Steagald* only protected the third party owner's interests and not the suspect's privacy interests. *See id.* (same).

121. *See id.* at 167 (setting forth legal inquiry).

122. *See id.* at 167-68 (reverting to use of "probable cause" as requirement of *Payton* despite using "reasonable belief" as standard in preceding sentence).

123. *See id.* at 168-69 (reciting holding of case).

124. *See* United States Marshals Service Investigative Services Fact Sheet, USMS Pub. No. 21-B (Feb. 20, 2007), *available at* http://www.usmarshals.gov/duties/factsheets/facts.pdf (providing that U.S. Marshals arrested more than 358,000 federal fugitives and cleared 41,000 felony warrants in 2005); *id.* (highlighting that fugitive task forces led by Marshals Service arrested more than 46,800 state and local fugitives and cleared 54,300 state and local felony warrants); Pennsylvania Commission on Crime and Delinquency, Crime Trends, Number of Total Arrests and Arrest Rates Per 100,000 Population: Pennsylvania, http://www.pccd.state.pa.

is not only an important legal strategy for defense lawyers trying to get their clients' charges dropped or moving to suppress evidence obtained as a result of the arrest, but it also has serious consequences on Third Circuit prosecutors who stand to lose access to incriminating evidence through suppression hearings.[125] By addressing the constitutionality of a home arrest and the subsequent admissibility of evidence acquired during the arrest on a case-by-case factual basis, the Third Circuit leaves police officers with the burden of instant decision-making.[126] If the court provided more of a bright-line rule, however, police officers could avoid unconstitutional home entries and the federal docket would no longer be burdened by conducting factual inquiries.[127]

Even if the *Veal* court had expressly adopted the probable cause standard, the Third Circuit would have at least clarified the appropriate standard for practitioners and police officers, leaving the substance of the holding to the scrutiny of academics.[128] By leaving open the possibility in *Veal* that a lesser standard than probable cause could exist under *Payton*, the Third Circuit invites practitioners to argue for a lesser standard when the particular facts arise.[129] For example, a prosecutor arguing against a

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us/pccd/lib/pccd/stats/statsdata/paarrsts_totjuvadlt.pdf (showing 80,257 arrests made in Pennsylvania in 2004). *See* Miner, *supra* note 23, at 201 (concluding that issue of home arrest is important for Supreme Court "to give the police a standard they can work with, and to provide citizens the protection they deserve").

125. *See* United States v. Pruitt, 458 F.3d 477, 481 (6th Cir. 2006) (deciding on constitutionality of home arrest raised by defendant as violative of Fourth Amendment rights); United States v. Route, 104 F.3d 59, 61 (5th Cir. 1997) (ruling whether to suppress evidence obtained during execution of arrest warrant at suspect's dwelling); United States v. Risse, 83 F.3d 212, 214 (8th Cir. 1996) (same); United States v. Lautner, 57 F.3d 212, 213 (2d Cir. 1995) (hearing challenge to lower court's refusal to suppress firearm found by police while executing arrest warrant in suspect's home).

126. *See* Saltzburg, *supra* note 5, at 1016 (contending that various Court decisions on Fourth Amendment cause police to make confusing, yet instant decisions).

127. *See id.* at 1018 (asserting that bright line rules for police regarding Fourth Amendment issues would "greatly assist law enforcement officers to do their jobs better and would ensure that dangerous criminals are not freed on technicalities that result from misinterpretations of these complex and arbitrary rules.").

128. *See generally* Charles E. Moylan, Jr. & John Sonsteng, *Fourth Amendment Applicability*, 16 WM. MITCHELL L. REV. 209, 236 (1990) (addressing that American courts have always been flooded with litigation which leaves no time to resolve Fourth Amendment questions "merely of academic interest"); Carol S. Steiker, *Of Cities, Rainforests, and Frogs: A Response to Allen and Rosenberg*, 72 ST. JOHN'S L. REV. 1203, 1206-07 (1998) (noting scholarly interest and disagreement over Fourth Amendment). *But see* Thomas M. Finnegan, *Scope of the Fourth Amendment*, 74 GEO. L.J. 499, 502 n.13 (1986) (stating that determination of whether particular action constitutes search and seizure consistent with Fourth Amendment "is not just an academic exercise").

129. *See* United States v. Veal, 453 F.3d 164, 167 n.3 (3d Cir. 2006) (describing confusion over *Payton* standard and acknowledging that another standard could exist).

motion to suppress evidence obtained during a home arrest, who lacks strong evidence that the police had probable cause to believe the suspect was inside, should argue under *Veal* that a lesser standard than probable cause exists.[130] Conversely, a defense attorney in the Third Circuit should argue in favor of a higher standard, probable cause, to prove that police did not have the requisite belief that the defendant was inside of his home.[131]

If the Third Circuit were ever to address the issue of which standard *Payton* requires, the court might likely find significant incongruence between "reason to believe" and "probable cause."[132] Nevertheless, based on the court's substitution of the phrase "reason to believe" with "probable cause" in both *Veal* and *Agnew*, it is equally likely that that the court does not differentiate between the two.[133] Such an analysis would not be novel as commentators have acknowledged that even if the *Payton* court sought a lesser standard than probable cause, both standards have been applied leniently, and not much difference exists between the two.[134]

V. CONCLUSION

In conclusion, although a significant difference might not exist between the "reasonable belief" and "probable cause" standards for home entry to arrest, a firm holding by the Third Circuit would resolve any lingering questions left open by *Veal*.[135] Better yet, if the Supreme Court articulated the appropriate standard, it would end the existing circuit

130. *See id.* (addressing standard of less than probable cause).

131. *See, e.g.*, United States v. Jones, 641 F.2d 425, 429 (6th Cir. 1981) (finding police with arrest warrant lacked probable cause to believe suspect was inside residence).

132. *See* Edwards, *supra* note 4, at 361 (contending that examination of *Payton*'s progeny could lead to conclusion that "reason to believe" rule "is a remarkably relaxed standard that is almost always satisfied").

133. *See id.* at 373 (finding that courts have been content with slim evidence of suspect's presence in residence and some courts appear to use "probable cause" and "reasonable belief" interchangeably). The Third Circuit's use of both terms in *Agnew* and *Payton* tends to support this conclusion. *See Veal*, 453 F.3d at 167 (using terms "probable cause" and "reason to believe" to describe same standard); United States v. Agnew, 407 F.3d 193, 196 (3d Cir. 2005) (same). *But see Veal*, 453 F.3d at 167 n.3 (leaving open possibility that lesser standard than probable cause exists, as evidenced by other circuit court holdings).

134. *See* Edwards, *supra* note 4, at 373 (arguing that court applying probable cause standard is just as lenient as court applying reasonable belief standard). Edwards provides an alternative approach to this dilemma by contending that empirical pragmatism would encourage judges to look beyond cases to reality of home arrests in rendering a decision. *See id.* at 374 (proposing solution to probable cause versus reasonable belief dilemma).

135. For a discussion of the theory that there is no difference between the two standards, see *supra* notes 50-51 and accompanying text.

split.[136] Such a distinction has wide-ranging impact on police officers in executing arrest warrants, practitioners in prosecuting or defending victims of home arrests, and individual residents of the Third Circuit who would like to remain aware of their Fourth Amendment rights.[137] Based solely on Third Circuit precedent in applying *Payton*, the court will likely find that a difference does not exist between the two standards, and the court will thus continue to use the phrases interchangeably.[138] Such a decision would have to overcome the hurdle already addressed by other circuits that the Supreme Court intentionally phrased the inquiry as "reason to believe" when it could have easily used the term "probable cause."[139] Nonetheless, the court exudes hope that a lesser standard exists as acknowledged by its sister circuits.[140] As such, the Third Circuit should adopt a lesser standard consistent with the plain language of *Payton* and consistent with its interpretation by a majority of its sister circuits.[141]

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136. *See generally Current Circuit Splits*, 3 SETON HALL CIR. REV. 191, 229-30 (2006) (documenting existing circuit split over appropriate *Payton* standard, particularly between Sixth and Ninth Circuits).

137. *See* Miner, *supra* note 23, at 201 (asserting that clarification of *Payton* would "give the police a standard they can work with, and . . . provide citizens the protection they deserve.").

138. For a discussion of Third Circuit precedent in interpreting *Payton* and using phrase "probable cause" interchangeably with "reason to believe," see *supra* notes 54-83 and accompanying text.

139. For a discussion of other circuits' interpretation of *Payton* based on thorough analysis of Supreme Court's word choice, see *supra* notes 37-53 and accompanying text.

140. *See* United States v. Veal, 453 F.3d 164, 167 n.3 (3d Cir. 2006) (noting possibility of lesser standard than probable cause in Third Circuit, as acknowledged by sister circuits).

141. *See* Edwards, *supra* note 4, at 363 (finding that this interpretation respects the Court's choice of a "unique formulation, reason to believe"). For a discussion of the circuit courts which have adopted a lesser standard, see *supra* note 45 and accompanying text.